

April 16, 2014

Dear Fellow Freeholders:

I am in deep sorrow over the death of our fellow board member and incredible public servant, Val Ogden. Val believed so deeply in the charter we are creating and remained vitally interested in our progress and the charter's adoption even when she was gravely ill.

In my mind Val is irreplaceable and it feels rather disrespectful to declare a vacancy so soon after her death. However, legal counsel has stated we must proceed promptly (see attached memo).

I therefore declare Val Ogden's position on the Board of Freeholders vacant. I have asked the remaining board members representing District 3 to nominate an appropriate replacement at the end of our April 22nd meeting. I will ask you to affirm that nomination and vote to appoint her replacement.

Per the prosecutor's instructions I also declare the Secretary office vacant and temporarily appoint Temple Lentz to fill that vacancy. I will also ask you to affirm that appointment at our April 22nd meeting.

Val's memorial service will be on April 26th at 1 pm at Gaiser Hall on the Clark College campus.

Sincerely,
Nan Henriksen, Chair

From: Cook, Christine
Sent: Thursday, April 10, 2014 5:56 PM
To: Nan Henriksen - Freeholder; Jenkins, Marlia; Gilbert, Holley; 'nannow@lycanon.org'
Subject: Val Ogden's passing

Hello, Nan,

My condolences to you and all who knew and worked with Val. The community has lost a very special person.

Her passing also means that a vacancy has been created on the Board of Freeholders, and her position as an officer is also open. At this point, the Board must follow procedures that are prescribed by its Bylaws and by state law. In Marlia's absence, I am taking it upon myself to advise you as to the steps for the Freeholders to take now.

1. Vacant position on the Board of Freeholders.

Article VIII of the Freeholders' Bylaws covers vacancies, and states as follows:

- "A. Vacancies on the Board, occurring pursuant to Section 41.12.010 RCW for elective office, shall be declared by the Chair.
- B. Vacancies on the Board shall be filled pursuant to Section 42.12.070 RCW and the Washington State Constitution."

The death of an incumbent is an event that creates a vacancy in an elected office, according to RCW 41.12.010(1), and so you are required to declare the vacancy. That should occur at the next meeting, although if you have a strong preference for doing so, you could make the declaration via email to all the Freeholders and post the declaration on the website.

The next step raises some questions, because the statute named by Bylaws, Art. VIII.B, which is RCW 42.12.070, applies only to a "vacancy on an elected nonpartisan governing body of a special purpose district ... a town, or a city other than a first-class city or a charter code city..." Because the Board of Freeholders is neither a special purpose district, nor any of those other entities, RCW 42.12.070 does not really apply in this situation. My research has not revealed any provisions in the Washington State Constitution that apply to vacancies in a non-partisan Board of Freeholders. As a result, we must look to other provisions of law.

RCW 36.32.490 directly addresses the situation. It states:

"County Freeholders – Method of filling vacancies.

"Vacancies in the position of county freeholder shall be filled with a person qualified for the position who is appointed by majority action of the remaining county freeholders."

That directive is actually the same as the requirement in RCW 42.12.070(1), which states:

"Where one position is vacant, the remaining members of the governing body shall appoint a qualified person to fill the vacant position."

In conclusion, at the Freeholders' meeting on April 22, first you should declare the vacancy. Then take non-partisan nominations, and hold a vote. Nominees must have been residents of Clark County for at least 5 years, reside in District 3, and be qualified electors. The person selected to fill the position must receive the votes of at least 8 Freeholders. In my opinion, this procedure is not optional, as the statutes and the Bylaws all use mandatory terms.

2. Vacancy among Board of Freeholders officers.

Because Val was the Secretary of the Board, Article V, Section E of the Bylaws of the Board of Freeholders goes into effect. It states as follows:

“An office vacated by an Officer ... shall be temporarily filled by appointment of the Chair until the next regular meeting of the Board, at which time nomination of a Freeholder(s) for the office may be received from the Freeholders present, and the office thereafter filled by a simple majority vote of the Board, or in the event of more than one nominee, that person who received the most votes of the Freeholders present.”

After the temporary appointment by the Chair, this provision describes the same method as was used to elect officers of the Board of Freeholders in the first place. Again, this election should occur at the next meeting, on April 22, and should follow the election to fill the vacant position.

3. Conclusion.

The Board is required by state law and your Bylaws to fill the vacancies on the Board caused by Val Ogden's passing. The vacant position and the vacant office should be filled by vote of the Board of Freeholders at your next regular meeting, April 22, 2014. The position of Freeholder must be filled by majority vote of the Freeholders. The office of Secretary may be filled by a plurality of the Freeholders if there are multiple nominees and none receives a majority.

If you have any questions or concerns about this, please contact me at 397-2478.

Chris

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